

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Edward Lee Cross,)	C/A No.: 1:11-2874-RBH-SVH
Petitioner,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
Robert M Stevenson, III, Warden of)	
Broad River Correctional Institution,)	
)	
Respondent.)	
_____)	

Petitioner Edward Lee Cross is an inmate at the Broad River Correctional Institution of the South Carolina Department of Corrections. He filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on Petitioner's motion for summary judgment [Entry #20] and motion for default judgment. [Entry #21]. The undersigned recommends that Petitioner's motions be denied.

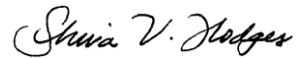
Prior to Respondent's appearance in this case, Petitioner filed a motion for summary judgment. In his motion, he states that he was convicted of trafficking cocaine in September 2005. He claims that the state relied on a conspiracy theory to convict him, but that he could not have been a conspirator while cooperating with the government. [Entry #20-1 at 1, 3]. On this basis, Petitioner claims that he is entitled to summary judgment and a certificate of appealability.

Petitioner's motion for summary judgment fails to demonstrate that there are no material facts in dispute such that he is entitled to judgment as a matter of law. Because the motion contains mere allegations concerning his pleadings, he has failed to meet his burden of proof and it is recommended that his motion for summary judgment be denied.

Petitioner's motion for default judgment should likewise be denied because Respondent filed a timely return by May 23, 2012. The docket reflects that Respondent's original deadline for filing a return was February 21, 2012. [*See* docket text of Entry #13: "Order authorizing service of process. Directing petitioner to notify the clerk in writing of any change of address. Return and Memorandum due by 2/21/2012."]. Prior to the deadline for filing a return, Respondent requested several extensions of time within which to respond to the petition. [Entry #22, 27, 31]. The court granted the extensions and set a final deadline of May 23, 2012 for Respondent to plead. [Entry #23, 28, 32]. Respondent filed a return and motion for summary judgment on May 23, 2012. [Entry #34, 35]. Because Respondent timely filed his return, Petitioner's motion for default judgment should be denied. Respondent's motion for summary remains pending and not yet fully briefed, as the court granted Petitioner's request for an extension to respond by July 28, 2012. [Entry #39].

For the foregoing reasons, the undersigned recommends the court deny Petitioner's motion for summary judgment [Entry #20] and motion for default judgment. [Entry #21].

IT IS SO RECOMMENDED.

A handwritten signature in cursive script that reads "Shiva V. Hodges".

June 26, 2012
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).